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SYDNEY

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Senator Claire Chandler

Chair

Finance and Public Administration Legislation Committee

Parliament House

Canberra

Via email: fpa.sen@aph.gov.au

Dear Senator Chandler,

Data Availability and Transparency Bill 2020 [Provisions] and Data Availability and Transparency (Consequential Amendments) Bill 2020 [Provisions]

The University of Sydney is grateful to have the opportunity to make a submission to the Senate Finance and Public Administration Legislation Committee's inquiry into the *Data Availability and Transparency Bill 2020 [Provisions]* and the *Data Availability and Transparency (Consequential Amendments) Bill 2020 [Provisions]*.

The University maintains a strong interest in the successful development and introduction of improved data sharing legislation that will enable research of significant public benefit. We have engaged with the extensive consultation processes that started in 2016 with the Productivity Commission inquiry into data availability and use, extending through to the exposure draft of this legislation released by the Department of Prime Minister and Cabinet in September 2020.

We appreciate the many opportunities that researchers and research institutions were given to contribute to the design of this legislation and the associated data sharing framework. Our staff with relevant responsibilities and expertise, whether as data managers or researchers, have closely followed and contributed to this process throughout. Indeed, the department's consultation process has been exemplary, with the convening of various briefing sessions and regional workshops throughout the different stages of the policy development process. Additionally, the University's Policy Lab worked closely with Dr Phillip Gould from the Office of the National Data Commissioner (ONDC) to convene a meeting with senior University of Sydney academics in 2018.

The University is broadly supportive of the Bill. However, some concerns, which we have raised previously during the consultations and in submissions on the draft legislation, are yet to be fully addressed. We have set these out below but are confident that most can be addressed if the ONDC is resourced adequately to establish and support co-design processes, and consultative and advisory structures during the legislation's implementation phase.



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Definition of ‘public benefit’ research

One of the criteria that data custodians will need to consider when assessing requests to share data for research purposes, is whether the requests are for research that is of ‘public benefit’. The term ‘public benefit’ is not defined in the Bill, yet data custodians will be asked to apply this test when making important assumptions and decisions about the value of research proposals in data sharing requests. If research ‘in the public benefit’ cannot be easily and consistently identified by data custodians, poor decisions to refuse data requests are likely. Such outcomes would not be consistent with the policy intent that underpins the legislation.

We note that data custodians across Commonwealth departments and agencies will require adequate support and access to resources to help them process data sharing applications with due consideration and within acceptable timeframes. This will be particularly important when assessing data sharing requests for public benefit research purposes.

Review of data sharing decisions

The University believes that review and complaint mechanisms around granting of permission to share data need to be defined and included in the legislation. The discretionary nature of decision-making around sharing of sensitive data is problematic, as there is no review process to assess the merits of the decision made, nor of the value of the proposed research. At a minimum, we suggest that all departmental data custodians should be obliged by the ONDC to report regularly on all data requests and their outcomes. Reasons for denying requests should be reported to the ONDC and published. Ideally, where reasonable requests are denied, there should be a review mechanism overseen by the ONDC. An independent appeals process should also be included to consider the reasonableness of a department’s refusal to make data available for research purposes intended to deliver public benefit.

Alignment with Open Access

The University submits that the legislation needs to align with the Open Access requirements and policies of the Commonwealth’s key research funding bodies, which mandate that research data are shared where it is appropriate to do so.

Charging of fees

The charging of fees needs to be defined, while in the cases of publicly funded universities, fees for accessing data should be minimised or waived where possible. We note that the use by data custodians of third-party Accredited Data Service Providers (ADSPs) to action successful data sharing requests will incur additional costs to researchers. Presumably ADSPs will charge commercial rates for their data services. Again, efforts should be made to minimise these costs for public benefit research. In addition to minimising or waiving fees for accessing data, fees associated with accreditation of institutions and their researchers need to be defined and also minimised for public, not-for-profit research institutions.

Legislative instruments

The likely impact of implementation of this legislation on universities and their researchers is hard to gauge while the legislative instruments are not yet defined. Many of the issues the University and other similar institutions have raised in responses to the exposure draft of the legislation have not been addressed, particularly around accreditation, provision of data services by ADSPs, resourcing of ONDC functions and handling of data sharing requests.

We suggest that representatives from the tertiary research and broader not-for-profit sector are consulted and an advisory panel convened (consisting of researchers, research administrators and data experts) who will co-design the governance processes that will need to be implemented to ‘operationalise’ the legislation. The agreed outputs from this co-design process should be built into the legislation (as is happening currently in



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consultations conducted by the Department of Home Affairs' Critical Infrastructure Centre for the *Security Legislation Amendment (Critical Infrastructure) Bill 2020*).

It is impossible to fully predict the impact the new regulatory framework will have for researchers and research institutions interested in accessing data from Commonwealth agencies. We therefore welcome the inclusion in the Bill of a requirement for an independent review within three years to assess the legislation's impact and effectiveness.

Yours sincerely,

Professor Duncan Ivison
Deputy Vice-Chancellor, Research